

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONY L. BARTLEY,

Defendant-Appellant.

UNPUBLISHED

August 30, 2002

No. 233204

Wayne Circuit Court

LC No. 00-007531

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant was charged with armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a bench trial, he was convicted of larceny from a person, MCL 750.357, and felony-firearm, for which he was sentenced to consecutive prison terms of 2 ½ to 20 years and 2 years, respectively. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that in acquitting him of armed robbery but convicting him of felony-firearm, the trial court impermissibly reached inconsistent verdicts. “A judge who sits without a jury in a criminal case must make specific findings of fact and state conclusions of law.” *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993). While juries are not held to any rules of logic, *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980), and their verdicts need not be logically consistent in light of their power of leniency, *People v Torres*, 452 Mich 43, 75; 549 NW2d 540 (1996), these considerations change when a case is tried by a judge sitting without a jury. *Vaughn, supra* at 466. The courts do “not normally enjoy the freedom to be inconsistent or to compromise.” *People v Burgess*, 419 Mich 305, 310-311; 353 NW2d 444 (1984).

The elements of armed robbery are (1) an assault, (2) a felonious taking of property from the victim’s person or presence, (3) while the defendant is armed with a dangerous weapon described in the statute. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Larceny from a person is a lesser included offense of armed robbery. *People v Thomas Jones*, 48 Mich App 470, 474-475; 210 NW2d 497 (1973). The elements of larceny from the person are: (1) the defendant took someone else’s property, (2) the property was taken without consent, (3) there was some movement of the property, (4) the property was taken from the complainant’s person or immediate presence or area of control, and (5) at the time the property was taken, the

defendant intended to permanently deprive the owner of it. CJI2d 23.3; *People v Wallace*, 173 Mich App 420, 426; 434 NW2d 422 (1988). It is the element of force that distinguishes this offense from a robbery. *People v LeFlore*, 96 Mich App 557, 561; 293 NW2d 628 (1980). The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The felony-firearm statute punishes the possession, as opposed to the use, of a firearm during the commission of a felony. *People v Elowe*, 85 Mich App 744, 748; 272 NW2d 596 (1978).

The trial court's verdict is not inconsistent. The complainant, who had recently ended her relationship with defendant, testified that she was a passenger in defendant's vehicle. Defendant, who was in the driver's seat, reached over and took her wallet from her nursing bag that was on the floor by her legs. Defendant took four \$100 bills from the complainant's wallet and threw the wallet at her. At the time that defendant took the money, he had a gun on his left thigh. There was no testimony that defendant used force or assaulted the complainant when he took the money. Therefore, the trial court could have logically concluded that defendant took money from the complainant without her consent and intended to permanently deprive her of her money and that defendant possessed a gun (but did not use it to effectuate the larceny) at the time he committed the larceny. Accordingly, we conclude that the trial court's verdict is consistent.

Affirmed.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen